

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

NORTH CENTRAL BLOOD SERVICES,
AMERICAN RED CROSS

Respondent

and

Case 18-CA-134834

AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES (AFSCME) COUNCIL 5,

Charging Union

Andrew S. Gollin, Esq., for the General Counsel.
David K. Montgomery, Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

CHRISTINE E. DIBBLE, Administrative Law Judge. This case was tried in Minneapolis, Minnesota, on December 10, 2014. The American Federation of State, County and Municipal Employees Council 5 (the Union) filed the charge in Case 18-CA-134834 on August 15, 2014.¹ The Regional Director for Region 18 of the National Labor Relations Board (NLRB/the Board) issued the complaint and notice of hearing on October 23. The North Central Blood Services, American Red Cross (the Respondent) filed a timely answer on November 25, denying all material allegations in the complaint and asserting several affirmative defenses.

The complaint alleges that the Respondent violated the National Labor Relations Act (NLRA/the Act) when (1) on about March 23, the Respondent modified an existing collective-bargaining agreement by changing unit employees' job titles and wage scales and unilaterally implementing those changes; (2) on about March 23, and continuing thereafter, the Respondent modified an existing collective-bargaining agreement by eliminating step increases in wages and unilaterally implementing the change; (3) on about March 23, the Respondent modified an existing collective-bargaining agreement by changing the qualifications required to fill the unit

¹ All dates are in 2014, unless otherwise indicated.

positions and unilaterally implementing the changes; (4) in about late March 2014, and at various dates thereafter, the exact dates being unknown, the Respondent bypassed the Union and dealt directly with Unit employees by asking employees to sign off on sheets which included their new job titles, and qualifications, among other things; and (5) since on or about April 29, the Respondent has failed and refused to provide the Union a list of members scheduled to receive step increases from April 29 to October 31. (GC Exh. 1-e.)²

On the entire record, including my observations of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a non-profit corporation with an office and place of business in St. Paul, Minnesota, processes and distributes various blood products for the American Red Cross. During the calendar year ending December 31, 2013, the Respondent derived gross revenue in excess of \$1,000,000, including federal funding in excess of \$1,000,000. In conducting its operations, the Respondent also purchased and received goods valued in excess of \$50,000 directly from points located outside the State of Minnesota. The Respondent admits, and I find, that at all material times it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Overview of Respondent's Operation

The American Red Cross provides over 40 percent of the blood collected in the United States. The Respondent is a division of the American Red Cross, and operates a facility in St. Paul, Minnesota, where blood that is collected from volunteer donors is processed into blood components. After processing, the blood components are labeled and sold to customers for patient transfusions. The manufacturing process occurs 7 days a week.

Barbara Partanen (Partanen) is the Respondent's director of manufacturing. Since January 6, Aliza Schoneberger (Schoneberger)³ has worked as the senior human resources advisor in the Respondent's St. Paul, Minnesota (St. Paul) location. In addition to other duties, she is responsible for policy administration, receiving and responding to grievances, processing

² Abbreviations used in this decision are as follows: "Tr." for transcript; "Jt. Exh." for joint exhibit; "GC Exh." for General Counsel's exhibit; "R. Exh." for Respondent's exhibit; "GC Br." for the General Counsel's brief; and "R Br." for Respondent's brief.

³ During the hearing, the counsel for the Respondent moved to amend the Respondent's answer to admit that Schoneberger and Lisa Rohr were agents of the Respondent within the meaning of Section 2(13) of the Act. (Tr. 8-9.)

payroll information, conducting internal investigations, and providing human resources support to managers. Schoneberger reports directly to Charles Smith (Smith), a human resources manager based in Des Moines, Iowa. Lisa Rohr (Rohr), currently the employee relations advisor, previously served in Partanen's position. Leslie Fransen (Fransen), a human resources advisor based in Minneapolis, works from the St. Paul location about three days a week. During the relevant period, Sabin Peterson (Peterson) was an attorney and the Respondent's senior director of labor relations. The Respondent admits that Peterson was a supervisor and its agent at all material times.

At all material times the Respondent has recognized the Union as the exclusive collective-bargaining representative of the following bargaining unit:

All full-time and regular part-time laboratory technologists, laboratory technicians, instructors and technical assistants, expressly including but not necessarily limited to, the lead reference laboratory technologist, the laboratory technologist neutrophil, the education lead technician, and the biomedical equipment technician employed by the Employer at its NORTH CENTRAL BLOOD SERVICES facility located at 100 South Robert Street, excluding all other facilities and positions, expressly including but not necessarily limited to, Research Scientists, office clerical employees, professional employees, guards and supervisors as defined in the Act, as amended.

(GC Exhs. 1(e), 1(g), 1(i) and 1(j)). There are about sixty employees in the bargaining unit at issue. John Ewaldt (Ewaldt) has been the Charging Union's field representative for about 3 years; and since 2011, he has been its chief negotiator with the Respondent.

The Charging Union and the Respondent have entered into successive collective-bargaining agreements (CBA), the most recent of which was effective from November 1, 2011 through October 3, 2014. (GC Exh. 1(e), 1(g), 1(i), and 1(j); Jt. Exh. 1).

B. Relevant CBA Provisions

Appendix A of the parties' most recently negotiated CBA lists the job titles, starting wages and step increases, and qualifications for bargaining unit employees. It lists six bargaining unit positions: technical assistant, laboratory technician, education lead technician, laboratory technologist, and biomedical equipment technician.⁴ (GC Exhs. 2, 3, 4, 5.) Appendix A also sets forth the pay schedule for each position with salary increases at 6 months, 3 years, 6 years, and 10 years for employment. The language specifically notes that the pay schedule for the positions is effective "[f]or the life of this contract..." (Jt. Exh. 1, Appendix A).

Article 4, section 3 of the CBA delineates the employer's and Union's rights and responsibilities on the establishment of new positions and changes in wages. The section reads:

⁴ Pursuant to a subpoena issued by the Region, the Respondent did not produce (or there does not exist) the position description for education lead technician. (Tr. 32-33.)

If the Employer proposes to establish any new, nonsupervisory Laboratory position titles at the covered facility, it will notify the Union twenty (20) days prior to implementation. The Union and Employer shall meet and discuss the inclusion of the title in the Bargaining Unit during the twenty (20) day notice period. Any disputes regarding inclusion or exclusion that remain unresolved following this discussion shall be promptly referred to the National Labor Relations Board for a decision. Wages for newly established titles included in the Bargaining Unit shall be negotiated. If no agreement is reached on wages, the Employer's wage proposal shall be implemented for the duration of the contract period.

(Jt. Exh. 1.) Article 5 of the CBA contains a management rights clause reserving to it, among other rights, "the rights to establish, change, combine or eliminate jobs, duties, job classifications (if any) and job descriptions; the right to establish wage rates for new or changed jobs or positions as provided by Article 4, Section 3 of the Agreement." Id.

C. 2011 – 2012 Contract Negotiations

In February 2012, Ewaldt met with Partanen as part of negotiations for a new CBA. During this meeting, she informed him that the Respondent had entered into a consent decree with the Federal Drug Administration (FDA) in 1993.⁵ Partanen explained to Ewaldt that as a result of the consent decree and the loss of hospital customers, the Respondent had to competitively price its blood products and standardize its blood processing procedure and labeling. She informed him that the Respondent would eventually have to implement a new labeling system for blood products called ISBTS128 because it had become the standard in the industry.⁶ Changeover to the new blood labeling system required "a complete computer conversion to a computer software application" named BioArch. (Tr. 83-84.) Moreover, Partanen told Ewaldt that the changeover to the new labeling system meant some tasks would be eliminated, including certain quarantine and labeling tasks in manufacturing. She also informed him that job classifications would change once the BioArch program⁷ was implemented. Partanen presented Ewaldt with a proposal to implement changes to job classifications.⁸ Ewaldt responded that the Union was uninterested in changing the terms of the CBA prior to its expiration. Consequently, contract negotiations were ongoing in 2012, with the CBA ultimately being reached without the changes mentioned by the Respondent in the February 2012 meeting.

D. Meetings in 2013 to Discuss Blood Labeling Changeover

On July 18, 2013, Rohr sent Ewaldt an email notifying him that the date for implementing R-2 was tentatively scheduled for September 30, 2013. On July 29, 2013, Ewaldt responded that he would forward the information to the local union leadership. The same day

⁵ The consent decree was amended in 2003. There is no evidence regarding the terms of the consent decree or its amendment because neither was offered as evidence.

⁶ ISBTS128 is the name for the international standard for blood product labeling. (Tr. 83.)

⁷ BioArch was implemented in two phases. The first phase, R-1, impacted mostly the blood collection portion of the Respondent's operation. Phase two, known as R-2, primarily affected manufacturing.

⁸ Partanen acknowledged that the proposals submitted in the 2012 contract negotiations were ultimately not implemented and were withdrawn.

Rohr responded in an email that she had been given a definitive implementation date of September 30, 2013 for the north central region.

There is no evidence that the Respondent and the Union met again to discuss the impact the changeover to the new labeling system would have on employees until September 12, 2013. Rohr and Ewaldt were present at the meeting, where they talked about the new job classifications and wage rate that would be implemented.⁹ During the meeting, Rohr handed Ewaldt the new job classifications, job descriptions, comparison of the new job classifications, and the proposed wages for the new job classifications. By email to Rohr dated September 17, 2013, Ewaldt demanded to bargain with the Respondent over the new wage range for the changed job classifications. He suggested that they meet on September 24. Ewaldt also requested information on data used to determine the proposed wage range, the number of bargaining unit employees that would be “red lined,” and all duties that would qualify for lead worker or educational differential. (R. Exh. 4.) Two days later, Rohr notified him that she and “the team” could meet with Ewaldt in the morning on September 24, 2013; and that they were working to get him the requested information. The job classifications/descriptions and the wage rate changes were supposed to be effective on September 30 but the Union was notified that R-2 would not go “live” on that date.

Following the meeting that occurred on September 24, 2013, Ewaldt sent Rohr an email dated September 30, 2013, stating that the Union disagreed with the Respondent’s changes to the job classifications and wage ranges. However, he acknowledged that the CBA allowed the Respondent to implement them.¹⁰ Ewaldt also noted that, “the step pay is a negotiated part of the contract that [the Respondent] cannot eliminate.” (R. Exh. 5.) He ended by informing Rohr that the Union was prepared to file a class-action grievance if the Respondent attempted to eliminate the step increases that were bargained for in the most recent CBA. Ewaldt provided undisputed testimony that Peterson told the Union that the meetings they held in September 2013 were not bargaining sessions. The Union subsequently filed a class-action grievance. However, Rohr rejected the grievance, noting it was premature because none of the proposed changes to the job classifications and wage ranges had been implemented.

E. Implementation of the Job Classifications and Wage Ranges

By email and letter dated March 3, Rohr notified Ewaldt that effective March 23, the Respondent would implement the R-2 and the changes in bargaining unit employees’ job duties, descriptions, titles, and wage scale. (Jt. Exh. 2.) The Respondent issued the notice to the Union pursuant to article 4, section 3 of their CBA. Rohr attached the mapping and corresponding wage

⁹ Ewaldt’s email to Rohr dated September 17, 2013, indicates that other union and management officials were possibly present at the meeting. (R. Exh. 4; Tr. 70.)

¹⁰ Ewaldt testified that his September 30, 2013, email to Rohr did not clearly convey his position on the Respondent’s proposed changes to the job classification and wage scale. He noted that his email contained a typographical error and there should have been an “and” in the first sentence between the words “classification” and “pay.” (R. Exh. 5.) He also explained, “The other piece is I was referring to [A]rticle 4, Section 3, in regards to their ability to implement after we’ve bargained, which we hadn’t.” I accept and find credible Ewaldt’s testimony on this point. Based on a review of that section of the CBA, his interpretation is not unreasonable. Moreover, the Respondent did not produce any persuasive evidence to convince me that Ewaldt is not credible on this point.

scale as part of her email and letter. The attachment revealed that the Respondent was replacing the five positions listed in appendix A of the CBA with 10 new positions. Also reflected in the attachment were changes in the starting wages for bargaining-unit employees and the elimination of step increases. The wages for several of the positions were lowered from those in the CBA at issue, especially when factoring in the loss of step increases. (Jt. Exhs. 1, 2.)

On March 6, Ewaldt responded to Rohr's email, demanding to bargain over the proposed changes to the job classifications and wage scale. He suggested the parties agree on a date to meet. Rohr responded March 9 by informing him that Schoneberger would be working with him on the issue.¹¹ In the meantime, the Respondent held several meetings with staff in the spring to brief them on the implementation of R-2 and conduct training sessions. (Tr. 90.) After the changes had been implemented on March 28, Schoneberger responded to Ewaldt and asked him to provide her with the dates that he was available to meet. She also suggested that they "consolidate these discussions with the contract reopener scheduled for this fall." (Jt. Exh. 4.) For the next several months, Ewaldt continued to exchange emails with Schoneberger and Peterson about scheduling mutually agreeable dates for negotiating sessions.¹² (Jt. Exhs. 6-10; GC Exhs. 6, 16.)

By email dated April 7, Schoneberger provided each manager and supervisor a spreadsheet with the names of bargaining-unit employees, their new job titles, copies of the new job descriptions, and a directive to notate on the spreadsheet the date that they gave each employee a copy of their new job description. She instructed the managers and supervisors to "[r]eturn your completed spreadsheet to me by COB 4/9/14 at which time all job descriptions should have been distributed." (GC Exh. 7.) Although the Respondent gave the Union a copy of the proposed new job descriptions at a meeting on September 12, 2013, there is no evidence that the Union was provided a copy of the job descriptions that were distributed in April 2014 by supervisors to the affected employees. Likewise, there is no evidence that the Union was notified that the job descriptions were going to be distributed by the Respondent directly to the bargaining unit employees or that a Union representative was present when the employees were given the new job descriptions.

F. Union's Request for Information on April 29

By email dated April 29, Ewaldt submitted a written request for information to Schoneberger. The request read in relevant part:

I am writing in regards to our members step increases. Please provide a list of members who are scheduled to receive step increases from current to October 31, 14. Thanks.

¹¹ Schoneberger was copied on both emails.

¹² Ewaldt testified that the Union wanted to negotiate over the implementation of the new job classifications, elimination of step increases, and changes to the wage scale. In its post-hearing brief, the Respondent argues that the only matter appropriate for bargaining pursuant to the CBA was the wage scale changes. (R. Br. 9; R. Exh. 5; GC Exhs. 12-14.)

(Jt. Exh. 5a; GC Exh. 8a.) On April 30, Schoneberger responded to Ewaldt that “[w]ith the newly implemented job titles and the wages we have set for them, there are no “step increases” to be implemented from current to October 31, 2014.” (Jt. Exh. 5; GC Exh. 8b.) Ewaldt followed with another email explaining the reasons for his information request. He stated in relevant part:

I want to make sure our grievance time lines are done properly. We will arbitrate any loss of steps prior to our contract expiration 10/31/2014.

(GC Exh. 8c.) Ewaldt also told her that the Union had filed a grievance with Rohr about the “steps.” Id. On May 5, Schoneberger asked him to forward to her a copy of the grievance. Ewaldt wrote:

We will file a new one as soon as we know a member had been denied a step. We will also need to grieve if you have hired new workers under these new classifications and pay rates without negotiating.

(GC Exh. 8f.). On the same date, Schoneberger informed Ewaldt that since the implementation of the new job titles and pay scale, “at least” one employee’s step increase was not processed and “at least” one employee was hired under the new pay scale. (GC Exh. 8g.)

G. Grievances Filed on Behalf of Employees Denied Step Increases

After submitting the April 29 written request for information, Ewaldt discovered through his own investigation that three employees had not received step increases since the implementation of the new wage scale. Consequently, the Union filed grievances on behalf of those employees. (GC Exhs. 9-11.) By letter dated May 22, Schoneberger informed Ewaldt that his grievances were denied at step 3 because they were untimely; and the matter was not subject to the grievance/arbitration procedure under the CBA. (GC Exhs. 12-14.) By email dated May 28, Ewaldt notified Schoneberger that the Union intended to arbitrate the cases. (GC Exh. 15b.)

H. Bargaining Sessions Post-implementation of Job Descriptions and Wage Scale Changes

On July 5 and 23 the parties finally met to discuss the Respondent’s changes to the job classifications/descriptions and wage scale changes. Ewaldt testified that in those meetings, the Union could not engage in meaningful discussions or suggest counter-proposals because the Respondent had already implemented the changes and had not responded to the April 29 request for information. (Tr. 71-72.) The Respondent did not change its stance that it properly implemented the changes to bargaining unit employees’ job descriptions, wage scales, and the elimination of the step increase. Subsequently, on or about July 24, Ewaldt sent the Federal Mediation and Conciliation Board (FMCB) and the Respondent notice of the Union’s intent to reopen the CBA and start negotiations over a successor agreement. The Respondent did not receive the reopener notification and the Union could not provide documentation that it was sent within the required timeframe. Consequently, the terms of the CBA, including the newly unilaterally implemented changes, automatically renewed for another year. (Jt. Exh. 1.)

III. DISCUSSION AND ANALYSIS

A. Request for Information

1. Legal standards

Section 8(a)(5) of the Act mandates that an employer must provide a union with relevant information that is necessary for the proper performance of its duties as the exclusive bargaining representative. *NLRB v. Truitt Mfg. Co.* 351 U.S. 149, 153 (1956); *Detroit Edison Co. v. NLRB* 440 U.S. 301, 303 (1979). "... [T]he duty to bargain unquestionably extends beyond the period of contract negotiations and applies to labor-management relations during the term of an agreement." *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 436 (1967). Information requests regarding bargaining unit employees' terms and conditions of employment are "presumptively relevant" and must be provided. *Whitesell Corp.*, 352 NLRB 1196, 1197 (2008), adopted by a three-member Board, 355 NLRB 635 (2010), *enfd.* 638 F.3d 883 (8th Cir. 2011); *Southern California Gas Co.*, 344 NLRB 231, 235 (2005). The standard for establishing relevancy is the liberal, "discovery-type standard." *Alcan Rolled Products*, 358 NLRB No. 11, slip op. at 4 (2012), citing and quoting applicable authorities.

In *Leland Stanford Junior University*, 307 NLRB 75, 80 (1992), the Board summarized its application of these principles as follows:

... the Board has long held that Section 8(a)(5) of the Act obligates an employer to furnish requested information which is potentially relevant to the processing of grievances, an actual grievance need not be pending nor must the requested information clearly dispose of the grievance. It is sufficient if the requested information is potentially relevant to a determination as to the merits of a grievance or an evaluation as to whether a grievance should be pursued. *United Technologies Corp.*, 274 NLRB 504 (1985); , *United Carr Tennessee*, 202 NLRB 729, 731.

The requested information does not have to be dispositive of the issue for which it is sought, but only has to have some relation to it. *Pennsylvania Power Co.*, 301 NLRB 1104, 1104-1105 (1991). The Board has also held that a union may make a request for information in writing or orally. Further, if an employer fails to respond timely to a request for information, the union does not need to repeat the request. *Bundy Corp.*, 292 NLRB 671, 672 (1989).

The law is well settled that the type of information request at issue, wages, is presumptively relevant and must be furnished on request. See *Booth Newspapers, Inc.*, 331 NLRB 296 (2000), and the cases cited therein; See also, *Salem Hospital Corp.*, 359 NLRB No. 82 (2013) (employer violated Sec. 8(a)(5) of the Act when it ignored and refused to furnish the requested disciplinary records).

2. Respondent's refusal to agree to the Union's April 29 request for information

The General Counsel alleges that Respondent violated Section 8(a)(5) and (1) of the Act when, on or about April 29, the Respondent failed or refused to provide the Union with relevant and necessary information on the names of members scheduled to receive step increases from April 29 to October 31, 2014. The Respondent counters that it immediately responded to the Union's April 29 request for information. The Respondent argues that Rohr's response on April 30 was sufficient because Ewaldt thanked her for the message, did not complain that it was inadequate, and failed to make a renewed and more specific request for information. In support of its argument, the Respondent cites *AT&T Corp.*, 337 NLRB 689 (2002).

I find that the information sought by the union is presumptively relevant to the performance of its statutory obligations and that the Respondent failed to furnish the requested information. It is well settled law that wage information is at the heart of many of the union's obligations to bargain knowledgeably and to vigorously police the terms of the contract. "[A] union's right to such information cannot be seriously challenged." *Woodworkers Locals 6-7 & 6-22 v. NLRB*, 263 F.2d 483, 484 (D.C. Cir. 1959); *NLRB v. F.W. Woolworth Co.*, 352 U.S. 938 (1956). Board law dictates that the Union is also entitled to the information at issue to determine if it is prudent and appropriate to file a grievance. *Ohio Power Co.*, 216 NLRB 987 (1975); *Leland Stanford Junior University*, supra. I find that the requested information is necessary for the Union to effectively monitor and enforce the terms of the CBA. Its access to the names of employees who did not receive step increases enables the Union to make a determination on whether to file a grievance on behalf of unit employees who might have been entitled to a step increase but for the Respondent's subsequent elimination of them. Filing grievances and requesting arbitration on behalf of aggrieved unit employees are legitimate functions of the union and the requested information is necessary for it to fulfill those duties. *United Technologies Corp.*, 274 NLRB 504 (1985); *United-Carr Tennessee*, 202 NLRB 729, 731(1973).

I find without merit the Respondent's argument that the charge should be dismissed. Contrary to the Respondent's assertion, Ewaldt's thanking Schoneberger for responding to his message is not a clear indication that he was satisfied with her response to his request for information. His subsequent actions makes it apparent that his "thank you" was nothing more than an expression of politeness to Schoneberger for acknowledging his email. Subsequent to receiving her response that "there are no 'step increases' to be implemented from current to October 31, 2014", Ewaldt began making his own inquiries about unit employees who had or would be harmed by the Respondent's change. It is undisputed that he discovered at least 3 employees whose names had not been given to him by the Respondent in response to his April 29 request. The Respondent failed to provide a valid explanation for its failure to timely provide Ewaldt with the names of those employees. Moreover, Ewaldt filed grievances on behalf of those employees but Schoneberger denied them because the Respondent deemed them untimely. If, however, the Respondent had provided Ewaldt with the individuals' names when he initially requested them, the Union might have been able to timely file them. It strains credulity to believe that the Respondent, who is privy to all of its employees' salary and other personnel information, would not have been aware of those employees who would have received step increases during the relevant period but for its unilateral elimination of them.

Ewaldt also followed up his initial request with another email on April 30, explaining that the Union needed the information to ensure that it met the deadlines for filing a grievance or notice to arbitrate any instances where step increases were denied to unit employees prior to the

expiration of the CBA on October 31, 2014. The evidence is clear that the Respondent was aware of at least one employee who had not received a step increase since implementation of the new wage scale and job classifications/descriptions because, by email dated May 5, Schoneberger admitted to Ewaldt that an employee was impacted by it. However, she did not provide him the employee's name. These examples convince me that Ewaldt's subsequent actions do not show that he was "satisfied" with the adequacy of the Respondent's response.

Finally, I do not find merit in the Respondent's argument that if the Union was not satisfied with the Respondent's response to its request for information, the Union was required to renew it. The Respondent cited *AT&T Corp.* above, to support its argument. In *AT&T Corp.*, the company decided to close a facility in Arizona which necessitated that it lay off bargaining unit employees and reassign the work to other corporate facilities in different parts of the country. The company formally notified the union of its decision, and the union's local president met with AT&T's division manager to discuss the action. During their discussion, the division manager explained the reasons for the facility closure. The union's local president asked for any studies, data or other documentation that was used to make the decision to close the facility. The company's division manager, in substantial detail, orally provided the information. The union's local president told him that he disagreed with the decision and would elevate the matter to the division manager's superiors. However, he did not present the matter to any other AT&T official, nor renew his request for information to those officials, or request to bargain with upper management over the decision to close the facility.

Contrary to the Respondent's argument, Board law does not require a union to repeat its request for information in a case such as the matter at hand. *Bundy Corp.* at 672. *AT&T Corp.* is distinguishable because in that case, the union official's actions gave clear indication that he was satisfied with the employer's response to his request for information; and the judge found that the Respondent orally provided the union with all of the requested information. In the case at hand, I have found that the Respondent did not provide the requested information. Further, the Board in *AT&T Corp.* focused on the union official's failure to follow up on his expressed intention to request bargaining with the division manager's superiors. In this case, Ewaldt did not tell Schoneberger that he was going to elevate his request for information to her superiors. Rather, he continued to make requests for the names of employees who would not receive step increases because of the Respondent's elimination of those increases. Although some of Ewaldt's subsequent requests for information were for other items, all of the requests related in some form to the Respondent's elimination of the step increase. (GC Exh. 8a-c; Jt. Exh. 5, 11, 12; R. Exh. 4.)

Accordingly, I find the Respondent failed and refused to provide the Union with relevant and necessary information that it requested on or about April 29, 2014, violation of Section 8(a)(5) and (1) of the Act.

B. Respondent's Unilateral Changes to the CBA

1. Legal standard(s)

The good-faith standard is used by the courts and the Board to determine if the parties have met their obligation to bargain under the Act. The Board takes a case-by-case approach in assessing whether parties have met, conferred, and negotiated in good faith. *National Licorice Co. v. NLRB*, 309 U.S. 350 (1940) (the Court adopted the “good faith” standard for an employer’s conduct); *St. George Warehouse, Inc.*, 349 NLRB 870 (2007) (the Board reviews the totality of the employer’s conduct in deciding if the employer has satisfied its obligation to confer in good faith). The duty to bargain, however, only arises if the changes are “material, substantial and significant.” *Alamo Cement Co.*, 281 NLRB 737, 738 (1986); *Flambeau Airmold Corp.*, 334 NLRB 165, 171 (2001). The General Counsel bears the burden of establishing this element of the prima facie case. *North Star Steel Co.*, 347 NLRB 1364, 1367 (2006).

An employer may not change the terms and conditions of employment of represented employees without providing their representative with prior notice and an opportunity to bargain over such changes. See *NLRB v. Katz*, 369 U.S. 736, 747 (1962). In order to find that an employer made unilateral changes to an employee benefit in violation of the Act, it must be shown that (1) material changes were made to the employees’ terms and conditions of employment; (2) the changes involved mandatory subjects of bargaining; (3) the employer failed to notify the union of the proposed changes; and (4) the union did not have an opportunity to bargain with respect to the changes. *San Juan Teachers Assn.*, 355 NLRB 172, 175 (2010). *Alamo Cement Co.*, supra; *Flambeau Airmold Corp.*, supra.

2. General Counsel has established a prima facie case

The General Counsel alleges that the Respondent violated Section 8(a)(5) and (1) of the Act when, since on or about March 23, the Respondent, without prior notice to the Union and without giving the Union an opportunity to bargain with the Respondent, unilaterally implemented new job titles, job classifications, and wage scales, and unilaterally implemented the elimination of step increases. I find that the Respondent unilaterally implemented these changes without providing the Union with effective notice and an opportunity to bargain.

In *Axelson, Inc.*, 234 NLRB 414, 415 (1978), the Board defined mandatory subjects of bargaining as,¹³

those comprised in the phrase “wages, hours, and other terms and conditions of employment” as set forth in Section 8(d) of the Act. While the language is broad, parameters have been established, although not quantified. The touchstone is whether or not the proposed clause sets a term or condition of employment or regulates the relation between the employer and its employees.

Wages have been defined broadly by the courts and the Board. *Mission Foods*, 350 NLRB 336 (2007) (employer violated the Act by denying structural wage increase because it is a term and condition of employment); *Laurel Bay Health & Rehabilitation Center*, 353 NLRB 232 (2008) (merit increase is a mandatory subject of bargaining); *United Refining Co.*, 327 NLRB 795

¹³*International Union of Operating Engineers, Local Union No. 12 (Association General Contractors of America, Inc.)* 187 NLRB 430, 432 (1970).

(1999) (change in wage rate is a mandatory subject of bargaining); *NLRB v. Katz*, at 746 (merit wage increase is a mandatory subject of bargaining). It is apparent that the elimination of step increases involves wages and clearly the wage scale is included in the definition of mandatory subjects of bargaining. Likewise, the impacted employees' salaries are tied to their job titles and classifications. The evidence shows that an employee's job title and classification determines his/her wage scale. (Jt. Exh. 1; Jt. Exh. 2.) I find that the job titles, job classifications, wage scale, and step increases are mandatory subjects of bargaining. Therefore, a unilateral change to them without prior notice to the employees' representative constitutes a refusal to bargain.

Implementation of unilateral changes to the job titles, job classifications, and wage scales and the implementation of the elimination of step increases significantly impacts the union's ability to represent its unit employees in disputes that are "those most essential of employee concerns—rates of pay, wages, hours and conditions of employment." *Arizona Portland Cement Co.*, 302 NLRB 36, 44 (1991). In implementing the unilateral changes at issue, the bargaining unit employees lost a portion of their wages. The evidence establishes that implementation of the change in job titles and classifications resulted in lower starting wages for employees hired on or after the date the changes were implemented. (GC Exh. 7; Jt. Exh. 1, 2.) Also, for newly hired employees and current employees who have not already reached the 10-year maximum step point, the elimination of the step increases results in loss of wages for those employees. I therefore find that the changes are material, substantial and significant.

Next, I turn to the question of whether the Union was provided with notice of the implementation of unilateral changes and given a reasonable opportunity to bargain. The Respondent argues that it gave the Union ample notice of the impending changes and their implementation. Further, the Respondent insists that despite providing the Union with proper notice, the Union's actions show that it was not prepared to bargain until after the changes were implemented. The General Counsel contends the Union was not given an opportunity to bargain over the issue, but rather the decision was presented to the Union as a fait accompli.

The Board has held that for notice to be effective and timely, it must be precise about future plans and timing; and "afford the union a reasonable opportunity to evaluate the proposals and present counter proposals" before implementation. *Pan American Grain Co.*, 343 NLRB 318, 318 (2004), vacated, 448 F.3d 465 (1st Cir. 2006), reaffirmed 351 NLRB 1412 (2007); see also *Gannett Co.*, 333 NLRB 355, 357 (2001); *UAW-DaimlerChrysler National Training Center*, 341 NLRB 431, 433 (2004); *Ciba-Geigy Pharmaceutical Division*, 264 NLRB 1013, 1017 (1982). A union has a responsibility to demand bargaining only when the employer has made "a clear announcement that a decision affecting the employees' terms and conditions of employment has been made and that the employer intends to implement this decision." *Oklahoma Fixture Co.*, 314 NLRB 958, 960-961 (1994), enf. denied 79 F.3d 1030 (10th Cir. 1996). *Centurylink*, 358 NLRB No. 134 slip op. at 2 (2012), appeal dismissed, 2014 WL 1378759 (D.C. Cir. 2014); *San Juan Teachers Assn.*, 355 NLRB 172, 176 (2010). Once an employer communicates to the union a clearly stated decision that it intends to implement at a specific time, the union is considered to have received timely notice of that change. *Sierra International Trucks*, 319 NLRB 948, 950 (1995).

During the February 2012 CBA bargaining session, Partanen explained that there would be some type of changes to the job titles, job qualifications, and wage scales and the elimination

of the step increases implemented in about 18 months. Although the Respondent told the Union in this meeting of its future plans to implement the changes, the Respondent did not give the Union a precise and definite decision on the timing and specifics of the changes. *Oklahoma Fixture Co.* at 961. Ewaldt's notes reveal that in the February 2012 meeting with Partanen, she told him that in about 1½ years or 18 months, they would switch to the new labeling system which would eliminate certain tasks, including the quarantine and labeling tasks in manufacturing. She also told Ewaldt that there would be changes to job classifications when R-2 phase was implemented. However, there is no evidence that Ewaldt or any other Union official was given a definite date for implementing specific changes. Partanen did tell Ewaldt that the Respondent felt changeover to the new blood labeling system was necessary because it had to comply with the FDA consent decree and remain competitive in the blood products industry. However, she never explained why implementation of the new blood labeling system necessitated new job titles, job qualifications, wage scales, and elimination of step increases. Contract negotiations continued in 2012 with no notification to the Union of a date for implementing the changes proposed in the February 2012 meeting. There is no substantive evidence that there were any further discussions about the proposed changes or implementation dates during subsequent contract negotiating sessions.

It was not until July 29, 2013, that Rohr sent Ewaldt an email that September 30, 2013, was the definite implementation date for the changes. Consequently, on September 12, 2013, the Respondent and the Union met to discuss the new job classifications and wage rates. The Respondent provided the Union with documentation that more specifically addressed the upcoming changes. In the meeting, Rohr gave Ewaldt a copy of the new job classifications, job descriptions, comparison of the new job classifications, and the proposed wages for the new job titles.¹⁴ On September 17, 2013, Ewaldt notified the Respondent via email that the Union demanded to bargain over the "new wage ranged for the classifications." (R. Exh. 4.) Despite their demand to bargain over the changes, Peterson informed the Union that the meetings in September about the changes were not bargaining sessions. To further emphasize this fact, when the Union attempted to file a grievance over the changes, Partanen rejected them on the basis that the grievances were premature because the changes had not yet been implemented. Subsequently, the Respondent withdrew the September 30, 2013, implementation date. There is no evidence that the Respondent informed the Union of its intent to continue with implementation of the changes until March 3, 2014, when it sent the Union a 20-day notice of intent to implement the changes on March 23, 2014.

Based on the foregoing, I find that the Union was given effective notice on March 3, 2014, when, pursuant to the CBA, the Respondent gave the Union a 20-day notice that it was making and implementing the changes discussed in the September 12, 2013 meeting. However, I find that the Respondent did not provide the Union with an opportunity to bargain over the changes.

¹⁴ Partanen insisted she provided Ewaldt with an economic proposal during the February 2012 bargaining session over the CBA. However, there is no persuasive evidence that prior to September 13, 2013, the Union was provided with the new position descriptions, job qualifications, and wage scales.

3. The Union did not waive its right to bargain

The Respondent contends that the Union waived its right to bargain. According to the Respondent, the Union's actions after it received the 20-day notice are proof that the Union failed to exercise due diligence, thus waiving its right to bargain over implementation of the changes. In support of its argument, the Respondent notes that the Union failed to send the Respondent a list of the information it would need from the Respondent in order to prepare for the bargaining session; the Union did not identify its bargaining committee members until April 16; the Union did not follow up to schedule a bargaining session after receiving the Respondent's March 28 response; and the Union never requested a delay in implementation of the changes until after bargaining sessions were held. The Respondent cites *AT&T Corp.*, 337 NLRB 689 (2002) to support its argument that the Union waived its right to require bargaining during the 20-day notice period by failing to exercise due diligence.

I reject the Respondent's argument because the evidence does not support a finding that the Union waived its right to bargain over the changes.

An employer to a contractual agreement may unilaterally take certain actions that result in changes to the terms and conditions of employment if there has been a "clear and unmistakable" waiver of the Union's right to bargain over the changes. *Pavilions at Forrestal*, 353 NLRB 540 (2008) (impasse irrelevant where employer unilaterally implemented new health insurance plan without providing union information, notice and opportunity to bargain concerning new plan); *Laurel Bay Health & Rehabilitation Center*, 353 NLRB 232 (2008) (employer prematurely declared impasse and unilaterally implemented changes in health insurance and other benefits where union requested and employer agreed to schedule subsequent bargaining session, union indicated willingness to "look at other plans," and union stated that it would prepare counterproposal). The "clear and unmistakable" standard requires that the contract language is specific, or it must be shown that the subject alleged to have been waived was fully discussed by the parties and the party alleged to have waived its rights did so explicitly and with the full intent to release its interest in the matter. *Allison Corp.*, 330 NLRB 1363, 1365 (2000); *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983).

I do not find that the Union's actions following its receipt of the 20-day notice on March 3, 2014, establish that it was uninterested in bargaining or waived its right to bargain over implementation of the changes. Although in his initial request to bargain, Ewaldt indicated he was unavailable to meet with the Respondent March 9-16, there is nothing in the record to indicate that he or other Union officials were unavailable to meet with the Respondent the following week (March 17-22). Moreover, despite Ewaldt's demands to bargain within days of receiving Rohr's notice of the changes and implementation date, Rohr did not respond to him until 5 days *after* the changes had been implemented. The evidence shows that both sides were responsible for changing scheduled dates and times that delayed the bargaining sessions. The evidence also shows that the Union regularly emailed the Respondent about dates for scheduling the bargaining sessions.

The Respondent also faults the Union for not asking for a delay in the implementation date. However, contrary to the Respondent's assertion, Ewaldt sent Peterson an email asking if the Respondent was willing to delay implementation of the changes until the parties had an

opportunity to bargain, and the response from him was unequivocally no. There is also no evidence that Ewaldt refused to meet with the Respondent until he received the information he wanted in preparation for bargaining sessions. Obviously, it would have been preferable to have the information in hand at the bargaining table. It is equally plausible that Ewaldt would have been satisfied if the Respondent produced the information at the start of the bargaining session or at some other relevant point in the negotiations. Moreover, after it learned of the Respondent's intention to make changes to employees' job title, job qualifications, wage scales and elimination of step increases, the Union made several requests for information related to those proposed changes, but the Respondent either refused or did not produce the information. It is not unreasonable to suppose that some or all of those items were the same as the ones he requested in his demand to bargain notice. Consequently, I find that none of these actions proves that the Union was not interested in bargaining over implementation of the changes; or, more importantly, that the changes and their implementation were fully discussed by the parties and that the Union explicitly waived its rights with the full intent to release its interest in the matter.

Finally, *AT&T* is inapposite because the Board did not decide the issue of whether the employer had a duty to bargain over its decision to close one of their facilities, and the source (the Act or the CBA) of its bargaining obligation. *AT&T* at 691. As previously discussed, that case involved whether the union official failed to act with due diligence, thus waiving the union's right to bargain over its right to receive requested information and the employer's unilateral changes to terms and conditions of employment. In *AT&T*, the union official, following his initial conversation with management over the company's decision to layoff employees, never made another request for bargaining. However, unlike in *AT&T*, Ewaldt demanded to bargain over the changes in September 2013 and again in March 2014. After the Respondent sent the 20-day notice informing him of the March implementation date, Ewaldt exchanged numerous emails with the Respondent's agents, trying to schedule bargaining sessions. Moreover, Ewaldt continued to make requests for information while both sides were trying to agree on a date for bargaining sessions. Unlike the union official in *AT&T*, I find that Ewaldt acted with due diligence regarding his request for information and demand to bargain over the Respondent's decision to unilaterally implement changes to employees' job titles, job qualifications, and wages.

4. CBA mandated timeline for bargaining over changes to its provisions

The Respondent contends that the CBA does not require that bargaining over the subjects at issue occur before their implementation. According to the Respondent, the CBA mandates that the Respondent give the Union 20-day notice before implementing changes but does not require bargaining over those changes during the 20-day notice period or before implementation. (R. Br. 18; Jt. Exh. 1 art 5 p. 6.) The Respondent also places great emphasis on the fact that Ewaldt admitted in an email that the CBA allowed the Respondent to unilaterally implement the new job titles, job classifications, and wage scales.

In his email, however, Ewaldt was referring to Article 4, Section 3 of the CBA, which allows the Respondent to implement changes to job titles and wage rates *after* it meets and bargains with the Union. (emphasis added) The section reads in relevant part,

“Any disputes regarding inclusion or exclusion that remain unresolved following this discussion shall be promptly referred to the National Labor Relations Board for a decision. Wages for newly established titles included in the Bargaining Unit shall be negotiated.”

(Jt. Exh. 1, p. 4.) The CBA mandates that wage proposals can be implemented only if no agreement is reached between the parties. Id. As the General Counsel correctly notes in its brief, the CBA contains no time limit on when the parties are to meet and bargain over wages. Further, the CBA is clear that the Respondent is not allowed to implement the elimination of the step increases without first bargaining over the issue.

Accordingly, I find that the Respondent violated Section 8(a)(5) and (1) when it unilaterally implemented for bargaining-unit employees new job title, job classifications, and wage scales and unilaterally implemented the elimination of step increases.

B. Respondent's Modification to the CBA

The General Counsel alleges that the Respondent modified the terms of an existing CBA by changing bargaining-unit employees' job titles, job qualifications, wage scales, and eliminating step increases in violation of Section 8(a)(5) and (1) and Section 8(d) of the Act. The Respondent argues that it had sound arguable bases for making the changes because it had to comply with the industry standards for blood labeling, and stay competitive in the blood labeling field.

Section 8(d) of the Act provides in relevant part:

That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications.

The Respondent modified the CBA approximately 7 months prior to its expiration date by changing the job titles and qualifications, wage scales, and eliminating step increases. In *Bath Iron Works Corp.*, 345 NLRB 499, 502 (2005), aff'd. sub nom. *Bath Marine Draftsmen's Assn. v. NLRB*, 475 F.3d 14 (1st Cir. 2007), the Board explained the different legal theories applied for “unilateral change” violation under Section 8(a)(5) versus an 8(d) violation of a “breach of contract.” The Board held:

In the “contract modification” case, the General Counsel must show there has been a contractual provision, and that the employer has modified the provision...A defense to the contract modification can be that the union has

consented to the change...the remedy for a contract modification is to honor the contract.”

345 NLRB at 501. A contract modification violates the Act if an employer has no “sound arguable basis” for its interpretation of the contract, and/or the contract modification was motivated by animus, bad faith or in any way seeks to undermine the Union. *Bath Iron Works Corp.* at 502. The Board looks to the plain language of the CBA, and the parties’ past practice and bargaining history to determine their actual intent. *Mining Specialists*, 314 NLRB 268, 269 (1994). In a contract modification case, the trier of fact must decide whether the contract forbade the conduct.

It is undisputed that the Respondent modified article 24 appendix A of the CBA prior to the expiration of the contract. (Jt. Exh. 1). I have also found that the Union did not consent to those changes. Therefore, I must decide whether the Respondent has a “sound arguable basis” for its action or was motivated by Union animus. The Respondent contends that it had to make the changes for “compelling business reasons.” The Respondent insists that as a result of the consent decree it entered into with the FDA and to stay competitive in the blood products industry, it had to change its labeling system for blood products. According to the Respondent, these factors forced it to make the changes at issue. The Respondent also contends that Article 4 Section 3 of the CBA specifically allows it to establish the new job descriptions, qualifications, and wage scales. However, the GC correctly notes that appendix A and article 2, section 1 of the CBA allows for modifications during the contract only by mutual agreement. Although, the Respondent points to the consent decree and staying competitive in the market as reasons for the changes, these assertions standing alone are not sufficient to sustain a finding that the Respondent had sound arguable bases for its actions. There is no explanation as to why more than 20 years after the initial consent decree and over 10 years after the amendment, it was so urgent for the Respondent to make the changes while the contract was in effect. There is no evidence to establish that waiting another 7 months for the expiration of the contract would have caused the Respondent irreparable harm, or any harm.

Accordingly, I find that the Respondent violated Section 8(a)(5) and (1) and Section 8(d) when it modified an existing CBA without the Union’s consent by making changes to bargaining unit employees’ job titles, job classifications, and wage scales and eliminated their step increases.

C. Respondent unlawfully engaged in direct dealing with its employees

The Board has determined that a number of factors must be considered in deciding whether an employer has engaged in unlawful direct dealing. I must assess whether the employer communicated directly with bargaining unit employees in order to establish or change terms and conditions of employment or “undercut” the Union’s role as the collective-bargaining representative; and whether the communications were made without notice to or excluded the Union. *Northeast Beverage Corp.*, 349 NLRB 1166, 1169 fn. 1, 1195 (2007), *enfd.* in relevant part, 554 F.3d 133 (D.C. Cir. 2009) (offer of lump-sum payment conditioned on agreement to forgo employment at new facility); *Gene’s Bus Co.*, 357 NLRB No. 85, slip op. at 40 (2011) (employer engaged in direct dealing by asking employees to sign tool allowance letters without notifying the union); *Bozeman Deaconess Hospital*, 322 NLRB 1107, 118, 1120 (1997)

(employer engaged in direct dealing by giving employees revised job descriptions without informing the union).

It is undisputed that on April 7, 2014, the Respondent instructed its supervisors to distribute new job descriptions to their employees who were Union members. It is also undisputed that the job descriptions were not provided to the Union prior to their distribution to the unit employees. All of the affected employees received their new job descriptions from a supervisor. The distribution of the new job descriptions occurred during the time period that the Union was attempting to schedule bargaining sessions with the Respondent over the changes. Again, as previously found, there is no evidence that the Union was notified that the job descriptions were going to be distributed by the Respondent directly to the bargaining unit employees or that a Union representative was present when the employees were given the new job descriptions.

Therefore, I find that the Respondent violated Section 8(a)(5) and (1) of the Act when it bypassed the Union and dealt directly with bargaining unit employees by providing them with unilaterally implemented new job titles and qualifications.

CONCLUSIONS OF LAW

1. The Respondent, North Central Blood Services, American Red Cross, St. Paul, Minnesota is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The American Federation of State, County and Municipal Employees (AFSCME) Council 5, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has violated Section 8(a)(5) and (1) and Section 8(d) of the Act by changing, without prior notice to the Union, its bargaining unit employees' job titles, job qualifications, wage scales and eliminating their step increases.

4. The Respondent has violated Section 8(a)(5) and (1) of the Act by unilaterally and without prior notice to the Union changing its bargaining unit employees' job titles, job qualifications, wage scales and implementing the elimination of their step increases.

5. The Respondent has violated Section 8(a)(5) and (1) of the Act when it failed or refused to provide the Union with the relevant and necessary information that it requested on or about April 29, 2014.

6. The Respondent has violated Section 8(a)(5) and (1) of the Act by bypassing the Union and dealing directly with bargaining unit employees by providing them with unilaterally implemented new job titles and job qualifications.

7. The above violations are unfair labor practices that affect commerce within the meaning of Section 2(6) and (7) of the Act.

8. The Respondent has not violated the Act except as set forth above.

REMEDY

5 Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

10 The Respondent, having discriminatorily made changes to the employees' job titles, job qualifications, wage scales, and eliminated their step increases, must rescind, upon request, any and all changes to their titles, qualifications, wage scales, and step increases and make them whole for any loss of earnings and other benefits they suffered as a result of the discrimination against them from the date of the discrimination to the date remedy is effectuated. Backpay because of the discriminatory discharge shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as provided in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), enf. denied on other grounds sub. nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011).

20 Respondent shall file a report with the Social Security Administration allocating backpay, if applicable, to the appropriate calendar quarters. Respondent shall also compensate the employees for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year, *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

25 The Respondent must also bargain in good faith with the Union over wages, hours and other terms and conditions of employment, and provide the Union with the information it requested on April 29, 2014.

30 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁵

ORDER

35 The Respondent, North Central Blood Services American Red Cross, St. Paul, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

40 (a) modifying an existing collective-bargaining agreement and without allowing the American Federation of State, County and Municipal Employees, Council 5 an opportunity to bargain over changes to bargaining unit employees' job titles, job qualifications, wage scales, and eliminating their step increases.

¹⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) unilaterally implementing and without allowing the American Federation of State, County and Municipal Employees, Council 5 an opportunity to bargain over changes to bargaining-unit employees' job title, job qualifications, wage scales, and eliminating their step increases.

(c) failing and refusing to provide the Union with requested information that is relevant and necessary to the Union's performance of its duties as the employees' collective-bargaining representative.

(d) bypassing and dealing directly with bargaining unit employees by providing them with modified and unilaterally implemented job titles, job qualifications, wage scales, and elimination of their step increases.

(e) refusing to bargain in good faith with the Union over wages and other terms and conditions of employment.

2. Take the following affirmative action necessary to effectuate the purposes and policies of the Act.

(a) Within 14 days from the date of the Board's Order, rescind any and all changes to the bargaining unit employees' job titles, job qualifications, wage scales, and step increases; and reinstate the step increases due under the parties' collective-bargaining agreement. Within 3 days thereafter, notify the employees in writing that this has been completed.

(b) Within 14 days from the date of the Board's Order, bargain in good faith with the Union over wages and other terms and conditions of employment.

(c) Within 14 days from the date of the Board's Order, provide the Union with the information it requested on or about April 29, 2014.

(d) Make the employees whole for any loss of earnings and other benefits they suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

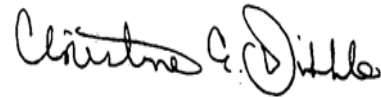
(f) Within 14 days after service by the Region, post at its facilities in St. Paul, Minnesota, copies of the attached notice marked "Appendix."¹⁶ Copies of the notice, on forms provided by

¹⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 23, 2014.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 3, 2015



Christine E. Dibble (CED)
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT alter terms of the collective-bargaining agreement that we have with the Union without consent of or without bargaining with the Union.

WE WILL NOT unilaterally change employees' terms and conditions of employment, including new job titles, new job qualifications, new wage scales, and the elimination of step increases, without notice to and without bargaining with the Union.

WE WILL NOT refuse to provide the Union with information relevant to the Union's role as representative of the bargaining-unit of employees, including the names of unit employees scheduled to receive step increases from April to October 31, 2014.

WE WILL NOT in any like or related manner refuse to bargain collectively and in good faith with the American Federation of State, County and Municipal Employees Council 5.

WE WILL NOT bypass the Union and deal directly with employees regarding terms and conditions of employment, for example, by distributing to them their new job descriptions.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, rescind any and all changes to your terms and conditions of employment that we made without the consent of or bargaining with the American Federation of State, County and Municipal Employees Council 5.

WE WILL, make whole, with interest, any employee for loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

WE WILL, upon request, bargain collectively and in good faith with the American Federation of State, County and Municipal Employees Council 5.

WE WILL, within 14 days from the date of the Board's Order, provide the Union with the information it requested on or about April 29, 2014 because it is relevant and necessary to the Union's performance of its duties as the employees' collective-bargaining representative.

**NORTH CENTRAL BLOOD SERVICES AMERICAN RED
CROSS**

(Employer)

DATED: _____ **BY** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

**National Labor Relations Board
Minneapolis Federal Office Building
212 Third Avenue, South Suite 200
Minneapolis, Minnesota 55401**

Telephone: (612) 348-1757

Fax: (612) 348-1785

TTY: (800) 877-0996

Hours of Operation: 8:00 a.m. to 4:30 p.m. CT

The Administrative Law Judge's decision can be found at www.nlr.gov/case/18-CA-134834 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, SE., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER.